

**BEFORE THE FEDERAL GRAND JURY  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	<b>INDICTMENT</b>
Plaintiff,	)	Taken at: Third Floor
	)	U.S. Courthouse
v.	)	Seattle, Washington
	)	
	)	
<b>HENRY C. ROSENAU,</b>	)	<b>Grand Jury 05-1</b>
	)	
	)	
	)	
	)	
Defendant.	)	
	)	

**COPY**

**TRANSCRIPT OF GRAND JURY PROCEEDINGS**

**TESTIMONY OF**

**JESSE MILLER**

**DATE TAKEN:**                      **May 11, 2006**

**10:19 a.m.**

<b>APPEARANCES:</b>	<b>RON FRIEDMAN, ESQ.</b> Assistant United States Attorney 700 Stewart Street, Suite 5220 Seattle, Washington 98101
Court Reporter	<b>DONNA HUNTER, RPR</b> Vernon & Associates Court Reporters #801 Washington Building 1019 Pacific Avenue Tacoma, Washington 98402

1 WHEREUPON, the following proceedings were had and  
2 done, to wit:

3 **JESSE MILLER**, after having been duly sworn in by the  
4 Grand Jury Foreperson testified as follows:

5 **EXAMINATION**

6 **BY MR. FRIEDMAN:**

7 Q. Would you state your full name and spell your last  
8 name for the record.

9 A. Jessie Miller, M-I-L-L-E-R.

10 Q. And how you are employed?

11 A. I'm a special agent with Immigration and Customs  
12 Enforcement.

13 Q. Called ICE?

14 A. Yeah, called ICE.

15 Q. And where are you assigned?

16 A. Bellingham, Washington.

17 Q. How long have you been with them?

18 A. For about five years.

19 Q. Are you the case in this investigation?

20 A. Yes, I am.

21 Q. Then please tell us who Fat Boy is.

22 A. I would love to, but I don't know.

23 Q. Is it fair to say that the investigation to date has  
24 failed to fully disclosed the identity of this person?

25 A. Yes.

1 Q. Let's talk about a fellow named Henry Rosenau. He  
2 is charged with the conspiracy to import marijuana beginning  
3 at a time within the last five years, continuing through on or  
4 about September 21, he conspired with others to import into  
5 the U.S. from Canada marijuana. It's alleged more than 100  
6 kilograms of marijuana are involved. That's the conspiracy to  
7 import. That's one crime.

8 Count 2, same events but we just refer to it as a  
9 conspiracy to distribute marijuana. That's the same, to come  
10 into the United States and thereafter be distributed, again,  
11 100 kilo grams or more. The possession of marijuana with  
12 intent to distribute would refer to the September 21 seizure.  
13 And then forfeiture allegation. The Grand Jury has heard from  
14 Mr. Miraback this morning.

15 Can you just provide a quick summary of the events  
16 of September 21 first, and then we'll go back and -- I guess  
17 not a quick summary, a summary of the events of September 21,  
18 including any observations made by the RCMP regarding a  
19 helicopter coming into the United States, a helicopter that  
20 had -- I'm putting up on the board Grand Jury Exhibit No. 8.  
21 It's a helicopter, that R-44 helicopter that looks like its  
22 tail letters are CF -- well, in fact, it's an R that has tape  
23 on the bottom of it to make it look more like a B; is that  
24 correct?

25 A. That's correct.

1 Q. And a K and an M; is that correct?

2 A. That's correct.

3 Q. And that's Grand Jury Exhibit No. 8. Are you  
4 familiar with that helicopter?

5 A. Yes.

6 Q. Is that the one we're going to be talking about?

7 A. Yes, it is.

8 Q. And is that the one that the Canadians were  
9 watching?

10 A. Yes, it is.

11 Q. Then if you would, can you start with the early  
12 morning hours of September 21 and tell us what RCMP was  
13 seeing.

14 A. Yes, we were conducting an operation, obviously over  
15 there on the other side of the mountains along with the RCMP  
16 who were embedded up into the Pasayten Valley on the Canadian  
17 around in the mountain range. Around 7:30 in the morning they  
18 observed this helicopter flying back northbound into Canada  
19 empty, just flying by itself, so they figured it may have  
20 already ran a load.

21 Shortly thereafter, the helicopter was then seen  
22 flying southbound with actually a long line attached to  
23 numerous hockey bags underneath.

24 Q. Grand Jury Exhibit No. 5, what is that a photograph  
25 of?

1           A.    That is a photograph of the suspect helicopter with  
2 numerous hockey bags attached to it. This then raised the  
3 suspicion of the RCMP to make them think they were doing  
4 something illegal.

5           Q.    That is Grand Jury Exhibit No. 5 for the record.  
6 All right. What are they -- then see, that is about 8:00  
7 o'clock in -- what happens after that?

8           A.    At about 8:39 a.m., then the helicopter is seen  
9 coming back north without hockey bags underneath. Shortly  
10 thereafter, about 9:00 a.m., the helicopter was seen again  
11 southbound with hockey bags underneath it, except this time it  
12 was a short line.

13          Q.    Grand Jury No. 6.

14          A.    At this time, you know, the helicopter is coming  
15 back down to the States. U.S. agents on the ground observed  
16 the helicopter around the Land Butte (phonetically spelled)  
17 area, which is in -- north of Winthrop where other helicopter  
18 loads have been taken and arrested. And the helicopter is  
19 seen -- the helicopter is then seen flying back northbound  
20 empty. Shortly thereafter two vehicles are coming down from  
21 the landing zone area. Those vehicles, was a white van and a  
22 red Toyota pickup truck, and the white van was driven by  
23 Zachary Miraback and the red Toyota pickup truck was driven by  
24 Braydon Miraback. And the red pickup truck as you recall was  
25 used in a previous load, the red Toyota pickup truck.

1           The vehicles were then surveilled back to the  
2           Seattle area where then Seattle agents made contact with the  
3           Miraback brothers at a residence in Seattle where they then  
4           recovered I believe it was 23 hockey bags of marijuana. And  
5           as -- on that day, you know, two loads were seen, the first  
6           helicopter sighting though was back north, so you know, it's  
7           safe to say that that helicopter had already flown south with  
8           the hockey bags, so basically three loads were delivered that  
9           day to the van.

10          Q.    And who -- this was a residence in Puyallup where  
11               the drugs were driven to?

12          A.    Yes, it was.

13          Q.    And who was found at that residence?

14          A.    At that residence a gentleman by the name of Birgis  
15               Brooks, nicknamed Cappy was located there, or he was inside  
16               the residence. When the van pulled in, the van actually  
17               backed up towards the garage.

18          Q.    And Grand Jury Exhibit No. 12, who is that?

19          A.    That is Birgis Brooks.

20          Q.    And the marijuana seized -- and am I correct that  
21               Birgis was at the house with his brother and then a female as  
22               well?

23          A.    Yes.

24          Q.    And Birgis indicated no knowledge there was some  
25               discussion with the occupants of the house and they indicated

1 no knowledge of any money or marijuana trafficking; is that  
2 correct?

3 A. Right, he stated he had no idea why these people  
4 would pull into his driveway.

5 Q. And what happened then on the Canadian side of  
6 things?

7 A. On the Canadian side after the third load and the  
8 helicopter went back north, we had already known basically  
9 where he was keeping this helicopter, so we already had RCMP  
10 personnel at the hanger where they kept the helicopter. The  
11 helicopter flew to that location within the timeframe of  
12 basically as soon as he was last seen, that's how it would  
13 take him to fly directly to that location. He then landed.  
14 RCMP personnel constables contacted the pilot as the  
15 helicopter was shutting down, the pilot was getting out. He  
16 was the sole person inside. They contacted him, and it was  
17 Henry Rosenau was the individual flying the helicopter.

18 Q. And did they take his picture?

19 A. Yes, they did.

20 Q. Is that it?

21 A. Yes.

22 Q. This is Grand Jury Exhibit No. 7, and this is right  
23 after he got out of the helicopter?

24 A. That's correct.

25 Q. Okay.

1       A.    The RCMP constables were able to observe the tail  
2 number was taped over.

3       Q.    All right.  No. 9, and up close you can make it out  
4 better than from the air; correct?

5       A.    That's correct.

6       Q.    All right.  And here is No. 10, the tape being  
7 peeled away?

8       A.    Yes.

9       Q.    All right.

10      A.    Also inside the helicopter was a bag that had a  
11 couple of satellite phones, some night vision goggles, I  
12 believe a GPS too, or there was a GPS inside the helicopter,  
13 which on that GPS there were plots -- well, one was titled  
14 entrance, and that is basically the entrance where they fly in  
15 the U.S. was the plot of what valley to fly into.  And there  
16 was also the plot of where he did the landing zone and land to  
17 do the off-load of the marijuana, and also a plot on there  
18 named *shop*, and that's where his hanger was.  There was also a  
19 .44 magnum handgun, loaded, in the helicopter.

20      Q.    All right.  Let's call that 12.  Is that a  
21 photograph of the --

22      A.    Yes, it is.

23      Q.    Let me make sure that my numbers are okay.  All  
24 right.  I'm going to refer to that as Grand Jury Exhibit No.  
25 13.



1           A.    The RCMP also spoke to this gentleman who arrived  
2 who stated he was actually the owner of the hanger. He stated  
3 that Rosenau was renting the hanger from him, and that was --  
4 basically he has seen Rosenau leave there numerous times all  
5 different days and hours in that helicopter.

6           Q.    What is 11?

7           A.    This is Rosenau's residence, and actually you can  
8 see in the garage there, there is also another little  
9 helicopter, and that is an R22, and that's basically the  
10 helicopter that we had seized here a while back, that size.  
11 It's a smaller version than the R44, had that. And then to  
12 the right there you can see a little bit of construction where  
13 they're actually building a hanger to house more aircraft.

14          Q.    And did later that day did this helicopter end up at  
15 this residence?

16          A.    Yes, later on the day after the RCMP made contact  
17 and then left, Mr. Rosenau -- shortly thereafter that  
18 helicopter ended up at his residence.

19          Q.    Got any background information on Rosenau?

20          A.    Henry Rosenau has been seen piloting this aircraft  
21 and other aircraft numerous times. He also does not actually  
22 have a valid pilot's license due to the fact he has Type II  
23 diabetes. He tried to finagle by going to a different medical  
24 doctor, but they were able to locate that, but -- so he does  
25 not have a valid pilot's license, but he does fly all the

1 time.

2 Q. Inside the Tundra, am I correct that on September 21  
3 was found some pieces of paper giving directions to the  
4 landing zone?

5 A. That is correct.

6 Q. And would that be what I marked as Grand Jury  
7 Exhibit No. 3 and 4?

8 A. Yes, it is.

9 Q. All right. And those directions are consistent with  
10 making entrance to and leaving that landing zone?

11 A. That's correct, to the Land Butte (sp) area.

12 Q. And this is the Tundra?

13 A. That's correct. This photo was taken by Special  
14 Agent Chad Boucher that works with me, and this picture was  
15 actually taken of the day of the Alexander Swanson load where  
16 Birgis Brooks was actually driving this vehicle in the blocker  
17 position while Alexander Swanson was the catcher. After we  
18 took off Alexander Swanson, if you recall, Birgis Brooks then  
19 drove around the interstate several times on by, and at one  
20 point got out of his vehicle, and according to our pilot just  
21 stated, *looks like he's freaking out*. He is throwing his  
22 hands up, he's on the phone like he didn't know what to do.  
23 He then also at one point --

24 Q. And when was that Swanson, do you remember when that  
25 was?

1 A. That was August 12, 2005.

2 Q. So you -- so you got the August 12th and this -- and  
3 Braydon is coming down on August 20th approximately, according  
4 to the Amtrak ticket?

5 A. Let me recheck this. Yeah, it was August 12, 2005,  
6 yes.

7 Q. Okay. And Braydon is coming around, coming down  
8 just a few weeks later?

9 A. Shortly thereafter.

10 Q. But something interesting. Am I correct that Chad  
11 Boucher was able to look into the car at some point? I don't  
12 where Birgis is.

13 A. Well, after the arrest of Alexander Swanson, after  
14 Birgis Brooks got done basically freaking out, he then also  
15 pulled off and tried to run up into the woods where we believe  
16 he was going to stash his phones, but then he changed his  
17 mind, he ran back into the woods, got in his vehicle, and then  
18 he just off to Seattle and -- where he then went to a  
19 residence near the residence where the Mirabacks were  
20 eventually arrested.

21 He parked his vehicle. He then got in with a blue  
22 mini van, which the blue mini van was at the residence when  
23 the Mirabacks were arrested, and then he went to this  
24 residence where the Mirabacks were arrested. That's when  
25 Agent Boucher took a photograph of the vehicle, walked up to

1 the side, looked into the vehicle and then took a photograph  
2 of a notepad that had the same notes that were given to the  
3 Mirabacks. If you notice, even at the bottom it has the same  
4 writing, it's basically the same notes, except in regards to  
5 the Mirabacks, Birgis Brooks ripped off -- ripped it off the  
6 notebook and actually handed it to the Mirabacks for  
7 navigation up to the same landing zone

8 Q. So this photograph is taken then on what date?

9 A. On August 12th.

10 Q. All right. And this is while Birgis Brooks is still  
11 in possession of the directions to the landing zone?

12 A. Correct.

13 Q. And is Stanley Swanson, is that the guy's name?

14 A. Alexander Swanson.

15 Q. All right. Alexander Swanson, is that -- was his  
16 landing zone similar to the landing zone that was...

17 A. Yeah, right up in the exact same area.

18 MR. FRIEDMAN: Yes. All right. Like I said, we're  
19 holding off on Brooks because we didn't want to multi task.  
20 And we will return on that, but at this point, we're  
21 presenting you with the indictment, the proposed indictment on  
22 the pilot. Any further questions?

23 GRAND JUROR: So he wasn't arrested in Canada after  
24 he was being observed carrying the marijuana to the U.S. and  
25 back? They don't arrest him up there?

1 THE WITNESS: No. We'd like that, but --

2 GRAND JUROR: Why do they bother even observing  
3 then?

4 THE WITNESS: Those are very good questions.

5 Q. Well, in fact, they're working --

6 A. They're working with us, and they're a very  
7 important part, like you know, without their observations, it  
8 would be very hard for us to ID the pilot.

9 Q. Is it fair to say their -- the law enforcement end  
10 of things is conducting law enforcement, but they often in  
11 these kinds of cases leave it to the U.S. to do the  
12 prosecutions?

13 A. Yes, that's correct, because of the sentencing, it's  
14 a lot more strict down here.

15 GRAND JUROR: So will they extradite him?

16 MR. FRIEDMAN: If he is in Canada, we will be -- and  
17 he doesn't want to come down, and we don't find him down here,  
18 we will move to extradite him from Canada and, yes, Canada  
19 extradites.

20 THE WITNESS: Yes, they do cooperate with us in that  
21 regard, and like I had said, the RCMP does do a really good  
22 job in regards to gathering the facts to help us with our  
23 cases down here.

24 GRAND JUROR: You mentioned that the owner of the  
25 hanger that Rosenau was leasing from noticed him leaving and

1 coming back from that numerous times. Did he have loads with  
2 him when he was leaving?

3 THE WITNESS: No, usually -- usually in almost all  
4 these situations they don't actually leave from the hangers  
5 with their loads. What they do is they fly from the hangers  
6 up into remote areas where then they'll pick up the load,  
7 usually near the border, and then they'll fly to a remote  
8 area, and in that, you know, they're not really setting  
9 themselves up by where they take off from.

10 GRAND JUROR: Is he -- I'm sure he is aware that the  
11 Mirabacks have been arrested here?

12 THE WITNESS: (Witness nodded.)

13 GRAND JUROR: So he is still flying loads back and  
14 forth then, even though he is not arrested?

15 THE WITNESS: We believe he is, but what they do is  
16 they just shift their operation to another area.

17 GRAND JUROR: Are the Canadian authorities at all  
18 concerned that he is flying without a valid medical? I mean,  
19 they don't want him dropping down everywhere.

20 THE WITNESS: Right. Yeah, I mean, they are  
21 concerned about that.

22 MS. ROE: Are they any more questions?

23 THE FOREPERSON: You may be excused if everyone is  
24 through with their line of questioning.

25 (Proceedings concluded 10:38 a.m.)

## C E R T I F I C A T E

STATE OF WASHINGTON )

) SS

COUNTY OF KING )

I, Donna Hunter, Certified Court Reporter and Notary Public duly and qualified in and for the State of Washington do hereby certify that the foregoing transcript is a true and correct transcript of my original stenographic notes.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this testimony is taken; and furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY IN AND FOR THE STATE OF  
WASHINGTON, RESIDING IN SEATTLE